

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID A. DEAN,

Plaintiff,

v.

1:22-CV-1014
(GTS/ATB)

JEFFREY GAUL,

Defendant.

APPEARANCES:

STEPHEN A. PECHENIK, ESQ.

Counsel for Plaintiff
Rensselaer County Attorney
1600 Seventh Avenue
Troy, New York 12180

JEFFREY GAUL

Defendant, *Pro Se*
c/o Paula Gaul
2279 Preisman Drive
Schenectady, New York 12309

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this breach-of-contract action filed by David A. Dean (“Plaintiff”) against Jeffrey Gaul (“Defendant”), are (1) United States Magistrate Judge Andrew T. Baxter’s Report-Recommendation recommending that the action be remanded to New York State Supreme Court, Rensselaer County, from which it was removed, because of untimeliness and lack of subject-matter jurisdiction, (2) Defendant’s Objections to the Report-Recommendation, (3) Defendant’s Notice of New Facts in Support of Removal, and (4) Plaintiff’s opposition to Defendant’s Objections. (Dkt. Nos. 8, 15, 16, 17.)

Also currently before the Court are (1) Defendant's response to the Court's Text Order directing Defendant to show cause as to why this action should not be *sua sponte* dismissed as having been untimely removed pursuant to 28 U.S.C. § 1446(b),¹ (2) Defendant's "reiterated motion for an extension to file removal at state level, his reply to [Plaintiff's opposition Defendant's Objections to the Report-Recommendation], and . . . further arguments in favor of the removal to this Court," (3) Plaintiff's opposition to Defendant's "reiterated motion," and (4) Defendant's supplement to his response to the Court's Text Order to Show Cause. (Dkt. Nos. 7, 14, 18, 19, 20, 21.) The Court has also carefully considered the arguments asserted in Defendant's "reiterated motion" and related arguments.

After carefully reviewing the relevant filings in this action, the Court can find no error in the Report-Recommendation, clear or otherwise: Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein, and remands this action to New York State Supreme Court, Rensselaer County. In addition, the Court denies Defendant's "reiterated motion" as moot and, in the alternative, as unsupported by a showing of cause.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 8) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

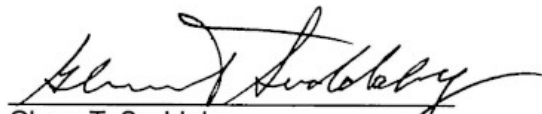
¹ Because the Court issued its Text Order to Show Cause one day before Magistrate Judge Baxter filed his Report-Recommendation, the Text Order to Show Cause was unnecessary. However, out of special solicitude to Defendant as a pro se litigant, the Court has carefully considered his response(s) to the Court's Text Order to Show Cause together with his Objections to Magistrate Judge Baxter's Report-Recommendation.

ORDERED that Defendant's "reiterated motion" (Dkt. No. 18) is **DENIED**; and it is further

ORDERED that this action is **REMANDED** to New York State Supreme Court, Rensselaer County; and it is further

ORDERED that the Clerk of Court transmit a copy of this Decision and Order to the Clerk of New York State Supreme Court, Rensselaer County.

Dated: January 31, 2023
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge